

1 ROB BONTA, State Bar No. 202668
2 Attorney General of California
3 DIANN SOKOLOFF, State Bar No. 161082
4 Supervising Deputy Attorney General
5 JULIANNE MOSSLER, State Bar No. 243749
6 Deputy Attorney General
7 1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 879-1349
Fax: (510) 622-2270
E-mail: Julianne.Mossler@doj.ca.gov
Attorneys for Defendants Gina Sanchez, Kimberly Kirchmeyer, and Lourdes Castro Ramirez

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

FULL CIRCLE OF LIVING AND DYING, et al.,

2:20-CV-01306-KJM-KJN

V

Plaintiffs,

**DEFENDANTS' REPLY TO
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

GINA SANCHEZ, et al.,

Defendants.

Date: February 11, 2022
Time: 10:00 a.m.
Dept: 3, 15th Floor
Judge: The Honorable Kimberly J.
Mueller
Trial Date: TBD
Action Filed: June 30, 2020

1 TABLE OF CONTENTS

	Page
3 Argument	1
4 I. Defendants are Entitled to Summary Judgment on Count III Because	
5 Plaintiffs Do Not Have a Due Process Right to Perform or Receive	
6 Unlicensed Services.....	2
7 A. The Bureau's Enforcement of the Act's Licensure Requirements	
8 Meets the Rational Basis Test.....	3
9 B. The Fifth Circuit Decision in <i>St. Joseph Abbey v. Castille</i> Does Not	
10 Support Plaintiffs' Position.	4
11 II. Defendants are Entitled to Summary Judgment on Count I Because the	
12 Bureau Does Not Regulate Pure Speech.....	5
13 A. The Citation Concerned Unlicensed Activities, and Did Not Affect	
14 the Kind of Pre-Planning "Advice" that Full Circle Claims to	
15 Provide.....	5
16 B. The Bureau Does Not Regulate Pre-Planning Advice Unless it	
17 Involves "Pre-Need Contracts" and Requires Pre-Payment of	
18 Services.	6
19 III. Defendants are Entitled to Judgment on Count II Because Full Circle and	
20 the Doula Plaintiffs Do Not Have a First Amendment Right to Advertise	
21 Services They are Not Licensed to Provide.	7
22 IV. Plaintiffs Have No Standing Because They were Not Injured by the	
23 Bureau's Enforcement Action and Cannot Show a Significant Threat of	
24 Future Harm.	8
25 V. Secretary Castro Ramirez is Not a Proper Party in this Suit.....	9
26 Conclusion.....	10
27	
28	

1 TABLE OF AUTHORITIES
2

	<u>Page</u>
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
CASES	
<i>City of Arlington v. FCC</i> 569 U.S. 290 (2013).....	2, 7
<i>Clapper v. Amnesty Int'l USA</i> 568 U.S. 398 (2013).....	9
<i>Coalition to Defend Affirmative Action v. Brown</i> 674 F.3d 1128 (9th Cir. 2012)	10
<i>Diamond Multimedia Systems, Inc. v. Superior Court</i> 19 Cal. 4th 1036 (1999)	4
<i>Florida Bar v. Went For It, Inc.</i> 515 U.S. 618 (1995).....	4
<i>Hoye v. City of Oakland</i> 653 F.3d 835 (9th Cir. 2011).....	9
<i>IDK, Inc., v. Clark Cty.</i> 836 F.2d 1185 (9th Cir. 1988)	2
<i>Long v. Van de Kamp</i> 961 F.2d 151 (9th Cir. 1992).....	9
<i>Lujan v. Defenders of Wildlife</i> 504 U.S. 555 (1992).....	8, 9
<i>Nat'l Org. for Women v. Scheidler</i> 510 U.S. 249 (1994).....	8
<i>National Audubon Soc'y Inc. v. Davis</i> 307 F.3d 835 (9th Cir. 2002).....	10
<i>Roberts v. United States Jaycees</i> 406 U.S. 609 (1984).....	1, 2
<i>San Diego Gun Rights Comm. v. Reno</i> 98 F.3d 1121 (9th Cir. 1996).....	8, 9
<i>Slidewaters LLC v. Wash. State Dep't. of Lab. & Indus.</i> 4 F.4th 747 (9th Cir. 2021).....	1, 3

TABLE OF AUTHORITIES
(continued)

Page		
3	<i>St. Joseph Abbey v. Castille</i> 712 F.3d 215 (5th Cir. 2013).....	4
5	<i>University of Texas v. Camenisch</i> 451 U.S. 390 (1981).....	1
6	STATUTES	
7	California Business and Professions Code	
8	§ 145(a)	1, 4
9	§ 7615.....	1, 3
10	§ 7615(a)	3, 4, 7
11	§ 7616.....	3
12	§ 7616(a)	3, 4, 7
13	California Government Code	
14	§ 12850.....	10
15	OTHER AUTHORITIES	
16	California Code of Regulations, Title 16	
17	§ 1246.....	8
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Defendants reply as follows to Plaintiffs' Opposition to Defendants' Motion for Summary
 2 Judgment. (ECF No. 41.)

3 **ARGUMENT**

4 Plaintiffs attempt to draw a false equivalency between the Constitution's protection of
 5 familial association belonging to families and friends caring for a deceased loved one, and the far
 6 lesser rights of a business such as Full Circle that requests payment in exchange for services
 7 involving the preparation of human remains for burial. (See e.g., ECF No. 41, Plaintiffs'
 8 Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary
 9 Judgment (Pls.' Opp'n. MSJ) at 6:6-9, 15:16-19.) Although the Constitution protects "highly
 10 personal relationships" as a fundamental right, *Roberts v. United States Jaycees*, 406 U.S. 609,
 11 619 (1984), "[t]he right to pursue a calling is not considered a fundamental right", *Slidewaters*
 12 *LLC v. Wash. State Dep't. of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021). Plaintiffs' attempt
 13 to seize the same Constitutional footing as grieving families and friends should be rejected.

14 Plaintiffs' opposition also ignores the State's significant consumer protection and public
 15 health and safety concerns related to unlicensed activity (Cal Bus & Prof Code, § 145(a); ECF
 16 No. 34-4, Decl. Sanchez ¶¶ 5-7, 9, 18; ECF No. 34-5, Decl. Miller ¶ 3), and attempts to focus the
 17 Court's attention only on Full Circle's pre-planning advice activities as if those are the only
 18 services that it advertises or performs for customers. But in conceding that they handle human
 19 remains without having the training and qualifications required by the Act, Plaintiffs have already
 20 admitted that Full Circle and the Doula Plaintiffs perform services that compromise consumer
 21 protection and public health and safety. (Cal. Bus. & Prof. Code, § 7615; see e.g., ECF No. 35-1,
 22 Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment
 23 (Pls.' MPA ISO MSJ) at 19:16-18 (washing, dressing, and moving human remains).) The
 24 Citation was addressed to these unlicensed services.

25 Additionally, Plaintiffs' opposition relies heavily on the findings in this Court's order
 26 granting the preliminary injunction. (ECF No. 41, Pls.' Opp'n. MSJ at 7:15-9:14.) But those
 27 findings were made before discovery was completed and before the full factual record was
 28 developed. As a result, the findings are not binding on summary judgment. *University of Texas*

1 *v. Camenisch*, 451 U.S. 390, 395 (1981).

2 The Bureau is responsible for enforcing the Act, and its interpretation of the Act is entitled
 3 to deference so long as it is reasonable: “[s]tatutory ambiguities will be resolved, within the
 4 bounds of reasonable interpretation, not by the courts but by the administering agency.” *City of*
 5 *Arlington v. FCC*, 569 U.S. 290, 296 (2013). It is undisputed that the Bureau determined Full
 6 Circle was violating the Act by advertising and operating as an unlicensed funeral establishment
 7 when the Citation was issued on November 19, 2019. (ECF No. 41, Pls.’ Opp’n. MSJ at 6:18-
 8 23.) In fact, Full Circle and the Doula Plaintiffs concede they were advertising and performing
 9 services that require licensure under the Act. (See, e.g., ECF No. 35-1, Pls.’ MPA ISO MSJ at
 10 19:16-18.) There can be no question then, that the Bureau was authorized to issue the Citation
 11 and order Full Circle to cease its unlawful activity. (ECF No. 34-4, Decl. Sanchez Exh. B.)

12 The Bureau did not violate Plaintiffs’ free speech or due process rights when it issued the
 13 Citation against Full Circle’s unlicensed activities, and there is no evidence to show that Plaintiffs
 14 are at imminent risk of suffering a violation of their constitutional rights from the Bureau’s
 15 enforcement actions. Defendants are entitled to summary judgment on all claims.

16 **I. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON COUNT III BECAUSE
 17 PLAINTIFFS DO NOT HAVE A DUE PROCESS RIGHT TO PERFORM OR RECEIVE
 18 UNLICENSED SERVICES.**

19 There is no dispute that home funerals are legal. Indeed, there is no statutory restriction on
 20 where a funeral may take place. It is also true that there is no express exception in the Act for
 21 home funeral services in which family members and friends engage in the activities of a funeral
 22 director, such as handling, washing or moving human remains. However, in enforcing the Act,
 23 the Bureau may refrain from enforcing licensure requirements against family members or their
 24 close friends who engage in such conduct, in light of the heightened constitutional protections
 25 provided to such persons—protections that are absent in the context of a business relationship.

26 The Fourteenth Amendment substantive due process provision protects “highly personal
 27 relationships” as a fundamental right. *Roberts*, 406 U.S. at 619. But the State may validly
 28 regulate *commercial conduct* that would be subject to protection if engaged in during the course
 29 of a family or other intimate relationship. *See IDK, Inc., v. Clark Cty.*, 836 F.2d 1185, 1193 (9th

1 Cir. 1988) (relationship between paid escort and client is not an intimate relationship protected by
 2 substantive due process). Full Circle and the Plaintiff Doulas are not providing their services to
 3 family members or close friends, but to all others who retain their services.

4 **A. The Bureau’s Enforcement of the Act’s Licensure Requirements Meets the
 5 Rational Basis Test.**

6 Full Circle and the Doula Plaintiffs admit that they are still providing services that a
 7 licensed funeral director provides when preparing human remains for burial or final disposition.
 8 (Cal. Bus. & Prof. Code, § 7615(a); *see e.g.*, ECF No. 35-1, Pls.’ MPA ISO MSJ at 19:16-18
 9 (washing, dressing, and moving human remains). Referring to these activities as “ceremonial” or
 10 “educational” (ECF No. 41-2, Decl. Murphy ¶¶ 6, 7) does not alter the fact that they are
 11 performed as part of the process of preparing human remains for burial or other disposition. (Cal.
 12 Bus. & Prof. Code, § 7615(a), 7616(a); *see* ECF No. 41-2, Decl. Murphy ¶¶ 6 and 29 “Often the
 13 deceased is placed in a casket for transportation to a mortuary, burial site, or cremation facility
 14 after a home funeral is finished.”)

15 Approximately 100 years ago, the California Legislature determined that preparation of
 16 human remains for burial should be regulated and subject to licensure. (ECF. No. 42-3, Decl.
 17 Mossler Exhs. B-E.) That determination has not changed under the current version of the Act.
 18 (Cal. Bus. & Prof. Code, §§ 7615, 7616.) Therefore, the Bureau acted rationally when it issued a
 19 Citation instructing Full Circle to cease its unlicensed activity.

20 “The proper test for judging the constitutionality of statutes regulating economic activity,”
 21 such as engaging in employment, “is whether the legislation bears a rational relationship to a
 22 legitimate state interest.” *Slidewaters LLC*, 4 F.4th at 758 (quoting *Jackson Water Works, Inc. v.*
 23 *Pub. Util. Comm’n*, 793 F.2d 1090, 1093–94 (9th Cir. 1986)). Under this deferential standard,
 24 Plaintiffs “must show that the state’s actions are clearly arbitrary and unreasonable, having no
 25 substantial relation to the public health, safety, morals or general welfare.” *Id.* Plaintiffs have
 26 failed to meet this test.

27 California has a compelling interest in protecting vulnerable consumers, and ensuring
 28 public health and safety by regulating the funeral industry through enforcement of the Act. *See*

1 *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 625 (1995); *Diamond Multimedia Systems, Inc. v.*
2 *Superior Court*, 19 Cal. 4th 1036, 1064 (1999). Plaintiffs failed to offer any evidence that the
3 Bureau was arbitrary or unreasonable when it ordered Full Circle to cease its unlicensed activity,
4 or that the Citation had no substantial relation to the public health, safety, and general welfare.

5 The Court should grant summary judgment to Defendants on Count III because the Act
6 satisfies rational basis analysis. Plaintiffs do not have a due process right to provide or receive
7 services for which a license is required under the Act.

8 **B. The Fifth Circuit Decision in *St. Joseph Abbey v. Castille* Does Not Support
9 Plaintiffs' Position.**

10 Plaintiffs' reliance on the Fifth Circuit decision in *St. Joseph Abbey v. Castille*, 712 F.3d
11 215 (5th Cir. 2013) is misplaced. The court in *St. Joseph Abbey* observed that the plaintiff monks
12 "do little that equates to operating a funeral home." *Id.* at 224 n.46. Here, in contrast, Full Circle
13 and the Doula Plaintiffs admit that they perform many of the same tasks as licensed funeral
14 directors. (Cal. Bus. & Prof. Code, §§ 7615(a), 7616(a); ECF No. 1, Compl., ¶¶ 70-72, 83-84;
15 ECF No. 35-1, Pls.' MPA ISO MSJ 8:3-13, 19:14-17; ECF No. 34-2, SSUF Nos. 28, 29, 33; ECF
16 No. 34-4, Decl. Sanchez ¶¶ 30, 31, 34.).

17 More importantly, the *St. Joseph* court held that the statute failed rational basis review
18 because the *sole justification for the statute was economic protectionism*, and the State's asserted
19 consumer protection rationale was belied by the actual structure of the law. 712 F.3d at 222-24.
20 Here, in contrast, Defendants have shown that the Act is justified by health and safety concerns as
21 well as consumer protection concerns (Cal Bus & Prof Code, § 145(a); ECF No. 34-4, Decl.
22 Sanchez ¶¶ 5-7, 9, 18; ECF No. 34-5, Decl. Miller ¶ 3), *none of which evidence Plaintiffs have*
23 *rebutted*.

24 As the court in *St. Joseph Abbey* concluded, "rational basis review places no evidentiary
25 burden on the government," but "plaintiffs may nonetheless negate a seeming plausible basis for
26 the law by adducing evidence of irrationality." *Id.* at 223. Plaintiffs failed to adduce any such
27 evidence. Accordingly, Defendants are entitled to summary judgment on Count III.

28 ///

1 **II. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON COUNT I BECAUSE THE**
 2 **BUREAU DOES NOT REGULATE PURE SPEECH.**

3 In their opposition, Plaintiffs argue that restrictions on their right of pure speech are subject
 4 to strict scrutiny review. (ECF No. 41, Pls.’ Opp’n. MSJ 7:6-9:14.) But other than their own
 5 mischaracterizations of the plain language in the Citation, Plaintiffs can point to no order, or any
 6 other communication from the Bureau, that can reasonably be read as a pure speech violation, or
 7 as they put it, a “blanket order to stop doing everything.” (*Id.* at 8:9-10.) Strict scrutiny review
 8 only applies to a pure speech violation, and because there is no pure speech issue or violation in
 9 this case, strict scrutiny review does not apply.

10 Instead of identifying statutes or producing any Bureau policy that restricts their right to
 11 pure speech, Plaintiffs focus their arguments on a misunderstanding of testimony concerning
 12 provisions in the Act that regulate commercial activities. These statutes involve advice and
 13 planning in the form of *pre-need contracts and pre-payment of funeral services*. (ECF No. 41,
 14 Pls.’ Opp’n. MSJ at 8:20-9:3.) As more specifically addressed in subsection C below, these
 15 statutes do not apply to Full Circle or the Doula Plaintiffs.

16 **A. The Citation Concerned Unlicensed Activities, and Did Not Affect the Kind**
 17 **of Pre-Planning “Advice” that Full Circle Claims to Provide.**

18 Plaintiffs argue that the Bureau issued a “blanket cease and desist order” regulating Full
 19 Circle’s advice services, and that the Bureau told Full Circle to “stop doing everything.” (ECF
 20 No. 41, Pls.’ Opp’n. MSJ at 7:13-16, 8:9-11.) This mischaracterizes the evidence in this case.
 21 The Citation did not order Full Circle to cease all activity, and did not even mention Full Circle’s
 22 pre-planning services or advice to its clients.

23 Assuming that Plaintiffs’ description of Full Circle’s pre-planning advice services is
 24 accurate, those services do not come within the Act’s licensing requirements, and therefore do not
 25 come within the scope of the Citation and order. (ECF No. 35-10, Exhibits to Rowes Declaration
 26 (Rowes Exhs.) Exh. F Sanchez Depo Testimony at 133:2-7, 134:5-11, 135:11-14.)¹

27

 28 ¹ Complete transcripts of the Deposition of Gina Sanchez and the Deposition of Glenn
 Miller were submitted by Plaintiffs’ counsel on November 19, 2021.

1 **B. The Bureau Does Not Regulate Pre-Planning Advice Unless it Involves
2 “Pre-Need Contracts” and Requires Pre-Payment of Services.**

3 Plaintiffs cannot identify any language from the Citation, or any other communication from
4 the Bureau, that directed Full Circle to stop providing advice. Instead, Plaintiffs mischaracterize
5 the Bureau’s deposition testimony about pre-need contracts to suggest that Full Circle’s advice
6 services may be regulated in the future.

7 Bureau Chief Sanchez explained in her deposition that the type of pre-planning activities
8 the Bureau regulates involves “pre-need contracts” where funds are deposited with a funeral
9 provider and intended to pre-pay for funeral services in the future. (ECF No. 35-10, Rowes
10 Exhs., Exh. F Sanchez Depo Testimony at 131:8-24.) As Field Representative Miller explained
11 in his deposition, under the Act, those funds must be safeguarded in a trust account or insurance
12 policy so that they remain available when the need arises. (ECF No. 35-10, Rowes Exhs., Exh. C
13 Miller Depo. Testimony at 57:4-15, 92:15-18.) Bureau Chief Sanchez testified that the Bureau
14 does not regulate the kind of pre-planning that Full Circle describes in this case:

15 [...]lanning your death care of where you want to be, what casket you want to be in,
16 where and how you want to be cremated or buried, preplanning in and of itself, we all pay
17 attorneys to do that all the time for our wills and putting things in trust. So that is not
18 overseen by the Bureau.

19 Now, if there is a contract that’s – or whatever, an agreement, verbal or not, that the
20 death doula’s going to come in and supervise and direct the body in preparation for burial,
21 transportation and final disposition, that’s where it then starts falling under the lines of a
22 funeral establishment. *If there are funds collected ahead of time for those specific goods
23 and services, that’s when it starts encroaching into that -- the pre-need statutes.*

24 (ECF No. 35-10, Rowes Exhs., Exh F Sanchez Depo. Testimony at 134:6-20, emphasis added.)
25 Thus, unless Full Circle accepts pre-payment for future funeral services as part of its pre-planning
26 advice services, it is not at risk of violating the Act’s pre-need provisions.

27 There is no evidence that the Bureau attempted to regulate Full Circle’s advice in the past,
28 or that Full Circle is at risk of the Bureau’s enforcement of the Act’s pre-need provisions in the
29 future. Because the Bureau never took any action to prohibit pure speech, Defendants are entitled
30 to summary judgment on Count I.

31 ///

1 **III. DEFENDANTS ARE ENTITLED TO JUDGMENT ON COUNT II BECAUSE FULL CIRCLE**
 2 **AND THE DOULA PLAINTIFFS DO NOT HAVE A FIRST AMENDMENT RIGHT TO**
 3 **ADVERTISE SERVICES THEY ARE NOT LICENSED TO PROVIDE.**

4 Plaintiffs' primary argument in opposition to Defendants' motion on Count II is that if Full
 5 Circle and the Doula Plaintiffs have a due process right to provide services that involve preparing
 6 human remains for burial, then their advertising offering those services is lawful, too. (ECF No.
 7 41, Pls.' Opp'n. MSJ at 15:9-21.) As discussed in Section I above, Plaintiffs' due process claim
 8 fails. Thus, their argument that they are entitled to advertise services for which a license is
 9 required fails as well.

10 In their own motion for summary judgment, Full Circle and the Doula Plaintiffs admit that
 11 they are engaged in activities of washing, dressing, shrouding, and moving human remains. (ECF
 12 No. 35-1, Pls.' MPA ISO MSJ at 19:16-18.) There is no question that these activities fall firmly
 13 within the bounds of the Act's licensure requirements. (Cal. Bus. & Prof. Code, §§ 7615(a),
 14 7616(a); ECF No. 34-5, Decl. Miller ¶ 6.) Plaintiffs do not, and cannot, dispute that Full Circle
 15 advertised those services on its website. (ECF No. 34-5, Decl. Miller Exh. A at CFB022-023,
 16 CFB026-027, CFB030.) Accordingly, Full Circle plainly violated the law by advertising services
 17 it was not licensed to provide.

18 The Bureau determined that Plaintiff Full Circle was engaged in unlicensed activities by
 19 advertising services that it was not licensed to perform, including arranging options for burial or
 20 cremation, preparing/filling out or obtaining legal and other necessary paperwork (including
 21 death certificates, permits for disposition, and cremation authorizations), and acting as a liaison to
 22 arrange transportation of the remains. (ECF No. 34-4, Decl. Sanchez Exh. B; ECF No. 34-5,
 23 Decl. Miller ¶ 6.) The investigation also revealed that Full Circle advertised the Doula Plaintiffs
 24 provide assistance in preparing the deceased for burial or other disposition by washing, dressing,
 25 shrouding, and casketing; they take steps to preserve the body by procuring and placing dry ice,
 26 and they providing oversight and guidance related to performing those tasks." (*Id.*) The Bureau's
 27 determination that these services require licensure was reasonable, and it is entitled to deference
 28 in this proceeding. *City of Arlington*, 569 U.S. at 296.

1 It makes no difference whether Full Circle and the Doula Plaintiffs admit to performing

1 every service identified in the Bureau’s investigation that requires licensure. It is enough that
2 they admit to performing some of them, including washing, dressing, and moving human remains.
3 (ECF No. 35-1, Pls.’ MPA ISO MSJ at 19:16-18.) Because Full Circle and the Doula Plaintiffs
4 plainly violated the Act in engaging in this conduct, it follows that Full Circle’s advertising of
5 those services also violated the Act’s prohibition against unlicensed activity.

6 The bureau is authorized to issue citations containing orders of abatement and assessing
7 administrative fines against unlicensed persons, partnerships, corporations, associations or
8 other organizations who engage in any activity **including advertising** for which licensure
by the bureau is required.

9 (Cal. Code Regs., tit. 16, § 1246 (emphasis added).) Therefore, the Bureau met the rational basis
10 test when it issued a Citation instructing Full Circle to cease its unlicensed activity of advertising
11 services it was not licensed to provide.

12 Plaintiffs’ secondary argument seems to be that post-Citation changes to Full Circle’s
13 website cured the violations. (ECF No. 41-2, Decl. Murphy ¶¶ 11, 16, 17.) Whatever remedial
14 measures Full Circle took after the Citation was issued do not invalidate the investigation’s
15 findings that Full Circle was engaged in unlicensed activity.

16 In short, Full Circle and the Doula Plaintiffs admit that they advertised services that require
17 licensure. The Citation ordering them to cease such advertising did not violate their free speech
18 rights. Defendants are entitled to summary judgment on Count II of the complaint.

19 **IV. PLAINTIFFS HAVE NO STANDING BECAUSE THEY WERE NOT INJURED BY THE**
20 **BUREAU’S ENFORCEMENT ACTION AND CANNOT SHOW A SIGNIFICANT THREAT OF**
FUTURE HARM.

21 Standing “represents a jurisdictional requirement which remains open to review at all stages
22 of the litigation.” *Nat’l Org. for Women v. Scheidler*, 510 U.S. 249, 255 (1994) (citing *Bender v.*
23 *Williamsport Area School Dist.*, 475 U.S. 534, 546-547 (1986)). In this case, the evidence
24 presented in the parties’ cross-motions for summary judgment establishes that Plaintiffs’
25 Constitutional rights were not harmed by the Bureau’s enforcement action, and Plaintiffs failed to
26 “show a very significant threat of future harm.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555
27 (1992); *San Diego Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996). As a result,
28 Plaintiffs lack standing under Article III.

1 To meet the test for standing in federal court, each Plaintiff must show that: (1) she has
 2 personally suffered an “injury in fact;” (2) the injury is fairly traceable to the challenged action of
 3 defendants; and (3) it is likely, as opposed to speculative, that the injury will be redressed by a
 4 favorable decision. *Lujan*, 504 U.S. at 560-61 (citations and internal quotation marks omitted).
 5 And where, as here, Plaintiffs seek only declaratory and injunctive relief, there is a further
 6 requirement that they “show a very significant threat of future harm; it is insufficient for them to
 7 demonstrate only a past injury.” *San Diego Gun Rights Comm.*, 98 F.3d at 1126.

8 The evidence shows that the Bureau acted lawfully when it issued the Citation instructing
 9 Full Circle to cease its unlicensed activities. Therefore, none of the Plaintiffs suffered an “injury
 10 in fact” that is traceable to Defendants’ actions. *Lujan*, 504 U.S. at 560-61.

11 The only future harm Plaintiffs articulate is their unsupported fear that “[a]nother
 12 investigation would reach the same conclusion about unlicensed activity that resulted in the
 13 original citation and order of abatement.” (ECF No. 41, Pls.’ Opp’n. to MSJ at 18:25-26.) But
 14 unsupported speculation about future harm is insufficient to satisfy the requirements of Article III
 15 standing. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 401-402 (2013).

16 Plaintiffs’ failure to identify a concrete future harm also means that their claims are not ripe
 17 for adjudication by this Court. The Ninth Circuit has “declined to entertain as-applied challenges
 18 that would require us to speculate as to prospective facts,” because such challenges are not
 19 sufficiently ripe. *Hoyle v. City of Oakland*, 653 F.3d 835, 859 (9th Cir. 2011) (citations omitted).
 20 This case should be dismissed because Plaintiffs do not have Article III standing and their claims
 21 are not ripe.

22 **V. SECRETARY CASTRO RAMIREZ IS NOT A PROPER PARTY IN THIS SUIT.**

23 Plaintiffs insist that Secretary Castro Ramirez is a proper party to this suit (ECF No. 41,
 24 Pls.’ Opp’n. MSJ 21:20-22:20), but she does not enforce the Act as a matter of law, and they cite
 25 to no interrogatory response, or deposition testimony, or even a document subject to judicial
 26 notice that establishes the necessary connection between Secretary Castro Ramirez and the
 27 Bureau’s enforcement of the Act. *Long v. Van de Kamp*, 961 F.2d 151, 152 (9th Cir. 1992).

28 Secretary Castro Ramirez has “general supervision over” the executive officers of four

1 boards and seven department heads, including Director Kirchmeyer. (Cal. Govt. Code, § 12850;
2 <https://www.bcsb.ca.gov/about/index.html>.) Director Kirchmeyer, in turn, oversees a department
3 that is comprised of 38 boards and bureaus that are directly responsible for enforcing their
4 respective laws, including the Bureau. (https://www.dca.ca.gov/about_us/entities.shtml.)

5 The connection necessary for Plaintiffs to maintain suit against Secretary Castro Ramirez
6 “must be fairly direct; a generalized duty to enforce state law or general supervisory power over
7 the persons responsible for enforcing the challenged provision will not subject an official to
8 suit.” *Coalition to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012)
9 (citation omitted); *see also, National Audubon Soc'y Inc. v. Davis*, 307 F.3d 835, 847 (9th Cir.
10 2002), opinion amended on denial of reh'g, 312 F.3d 416 (9th Cir. 2002) (Secretary of Resources
11 Agency lacked requisite connection to enforcement). Here, the requisite connection between
12 Secretary Castro Ramirez and the Bureau’s enforcement of the Act is lacking and does not satisfy
13 the Ninth Circuit’s requirement of a “fairly direct” connection to enforcing the Act. *Coalition to*
14 *Defend Affirmative Action*, 674 F.3d at 1134.

15 CONCLUSION

16 Defendants are entitled to summary judgment because Plaintiffs’ Constitutional rights were
17 not violated when the Bureau issued a Citation to stop Full Circle’s unlicensed activity.

18 Dated: December 10, 2021

Respectfully submitted,

19 ROB BONTA
20 Attorney General of California
21 DIANN SOKOLOFF
22 Supervising Deputy Attorney General

23 

24 JULIANNE MOSSLER
25 Deputy Attorney General
26 *Attorneys for Defendants Gina Sanchez,*
27 *Kimberly Kirchmeyer, and Lourdes Castro*
28 *Ramirez*

DECLARATION OF SERVICE

Case Name: **Full Circle of Living and Dying
v. Gina Sanchez, et al.** No. **2:20-CV-01306-KJM-KJN**

I hereby certify that on December 10, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on December 10, 2021, at Fremont, California.

Noel Garcia
Declarant

MGarcia

Signature